

Filing an Amortization of Debt (Chapter 128) Case in Milwaukee County

This guide is designed to help people who do not have attorneys who are filing an amortization of debt case in Milwaukee County. Nothing in this document is intended to be taken as legal advice. If you are seeking legal advice, or have questions regarding your specific situation, you should consult with an attorney.

What is an amortization of debt action?

Amortization of debt actions (often called “Chapter 128” actions, after the chapter of the Wisconsin Statutes in which it is contained) allow a Wisconsin resident with a steady income (this statute applies to “[a]ny person whose principal source of income consists of wages or salary”) to pay certain debts in full through monthly payments over a period of not longer than three (3) years.

What is the difference between amortization of debt and bankruptcy?

Unlike a Chapter 7 bankruptcy, an amortization of debt action does not discharge (or wipe out) debt without payment. All included debts must be paid in full via the payment (amortization) plan. The amortization plan is more like a Chapter 13 bankruptcy plan. However, there are many differences between bankruptcy and amortization. To understand the differences and which is best for you, **you may wish to seek the advice of an attorney.** The Milwaukee Bar Association’s lawyer referral service number is 414-274-6768.

Does an amortization of debt action protect me from my creditors?

Any creditor included in a court-approved amortization of debt order cannot garnish your wages, or bank accounts, or otherwise try to collect on the debt. The creditor CAN, however, still file a lawsuit and obtain a judgment against you in court, if the creditor has not already done so. Additionally, if you do not follow through with making the payments, and the case is dismissed, or if the included debt is not paid off after the end of the three (3) year period, the creditors can resume debt collection efforts.

What types of a debt can I include?

Generally, you can include any unsecured debt, such as late rent, past due utility bills, payday loans, credit cards, medical bills, accounts in collection, etc. You usually cannot include secured debt, such as a car payment or mortgage, **UNLESS** the creditor agrees. However, remember that the plan must result in all included debts being paid off in three (3) years, so large debts may not be appropriate for amortization.

Do I need an attorney?

An attorney can help you determine if an amortization of debt is right for you and, if so, what debts can and should be included. An attorney can also handle the paperwork and procedures. Some attorneys will agree to have their fees included as part of the debt that is paid in monthly installments. If you are interested in getting a referral to an attorney who handles these types of cases, call the Milwaukee Bar Association's lawyer referral service. Their phone number is 414-274-6768. However, you are not required to have an attorney to file an amortization of debts case.

What is a trustee and how do I find one?

The trustee is a neutral, third party who oversees the collection of money and makes payments to the creditors. In Milwaukee County, you must find a trustee and get their written agreement to serve before you file. The trustee must then be approved by the court. The trustee is paid a pre-determined percentage of the total debt and the fee is included in the monthly payments. The Clerk's office maintains a list of individuals who have been approved as trustees in Milwaukee County and who agree to be on the list. They are included with the directions packet. The Clerk's office makes no recommendations about these individuals and you may find one on your own, although the Court must approve the trustee and there are specific guidelines for who may be a trustee.

How do I file an amortization of debt action in Milwaukee County?

In this packet are forms approved for use in Milwaukee County, as well as filing directions.

Can I get help filling out the forms?

The Milwaukee Justice Center Self Help Services, located in Room G-9 of the Courthouse, can provide packets of forms and instructions, as well as provide help filling out the forms. You can obtain the packets from 8-5, Monday through Friday. However, you can get help filling out the forms **by appointment only**. You can make an appointment by calling 278-2912, stopping in Room 104P of the Courthouse, or emailing ctimail@wicourts.gov. **Please note that the MJC Self Help Services cannot provide legal advice, which includes helping individuals determine what debts they can or should include in their case.**

Filing an Amortization of Debt (Chapter 128) Case in Milwaukee County Checklist

1. Obtain the consent of a Trustee to act in your case. Approved trustees are on a list at the back of the form packet.
2. **Fill out a Petition to Amortize Debts (Form CV 5)**
 - A. You must include your name and address as debtor (and your spouse's if you are filing together).
 - B. In paragraph 2, you must list an employer. As this statute applies to people whose principal source of income is wages or salary, petitions that do not list a valid employer are unlikely to be approved.
 - C. In paragraph 5, you must choose either that the court order payment to the Trustee from your employer by payroll deduction or that the court order that you will pay the trustee directly.
 - D. In paragraphs 6/7, you must include the required Trustee information, indicating that you have talked to the proposed Trustee.
 - E. It must be notarized. **Notaries are available in Room 104 of the Courthouse.**
3. **Fill out an Affidavit of Debts (Form CV 6)**
 - A. The affidavit must list all of the creditors to be included in the plan, by name and address.
 - B. It must list the total amount due each creditor.
 - C. It must include a total of all the debts to be included in the plan.
 - D. It must be notarized. **Notaries are available in Room 104 of the Courthouse.**
4. **Fill out an Order Appointing Trustee and Enjoining Creditors (Form CV7)**
 - A. It must include the requested trustee information.
 - B. You must choose either that the court order payment to the Trustee from your employer by payroll deduction or that the court order that you will pay the trustee directly.
 - C. You must include a proposed amount to be deducted from your paycheck and paid by your employer to the trustee **per paycheck** OR a monthly amount to be paid by you directly to the trustee.

5. **Obtain the Written Consent of a Trustee to act in your case.**

Attached to the form packet is a list of individuals who have been approved as Trustees in amortization of debt cases in Milwaukee County. Neither the Milwaukee Justice Center nor the Clerk of Courts' office makes any recommendations about the individuals on the list. You may propose a different Trustee.

6. **Make 1 copy of the Petition to Amortize Debts, 1 copy of the Affidavit of Debts and 2 copies of the Order Appointing Trustee and Enjoining Creditors.** A copy machine is available in Room G10-1 of the Courthouse (Legal Resource Center) for 20 cents a page.

7. **Prepare two (2) stamped envelopes**

- A. One should be addressed to the Trustee, so the court can send the Trustee the petition, affidavit, and order appointing trustee.
- B. One should be addressed to you, so you can receive a signed order from the court.

8. **File your papers in Room 104 and pay the \$35 filing fee.** In addition to the fee, make sure you have the following:

- A. **The original and one copy of your Petition to Amortize Debts**
- B. **The original and one copy of your Affidavit of Debts**
- C. **The original and two copies of the Order Appointing Trustee and Enjoining Creditors**
- D. **The Written Consent to Act of the Trustee**
- E. **Your two stamped envelopes, one addressed to you and one addressed to the trustee.**

The Milwaukee Justice Center Self Help Services, located in Room G-9 of the Courthouse, can provide help filling out the forms **by appointment only**. You can make an appointment by calling 278-2912, stopping in Room 104P of the Courthouse, or emailing ctimail@wicourts.gov. Please note that the MJC Self Help Services cannot provide legal advice, which includes helping individuals determine what debts they can or should include in their case.

Milwaukee County Form CV 5: Petition to Amortize Debts

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No. _____

Petition to Amortize Debts under Wis. Stat. §128.21

1. Debtor is an adult resident of Milwaukee County, Wisconsin, residing at _____
_____ (state address).
2. Debtor is employed by _____
_____ (state full name and address of each employer).
3. Debtor is indebted beyond debtor's ability to pay debts as they mature, and the assistance of the court is needed in the amortization of such indebtedness pursuant to Wis. Stat. § 128.21.
4. Debtor believes that unless the assistance of the court is obtained for the amortization of indebtedness pursuant to Wis. Stat. §128.21, creditors will continue to harass debtor by the issuance of garnishment, attachment or execution. Debtor is of the opinion and belief that debtor will be able to make future payments at regular intervals according to a plan of amortization so as to amortize debtor's indebtedness over a period of not more than three (3) years.
5. Debtor requests that (choose one):
☐ the court enter an order that a portion of debtor's payroll checks be assigned directly to the trustee in this proceeding in an amount set forth in the proposed order submitted with this petition.
☐ debtor pay to the trustee directly an amount set forth in the proposed order submitted with this petition.
6. Debtor requests that _____

(list name, address, telephone and e-mail of the proposed Trustee) be appointed Trustee in this proceeding.
7. Choose one:
☐ My attorney certifies below that he/she has contacted the proposed Trustee and the proposed Trustee has consented to act.
☐ I have personally spoken with the proposed Trustee and attached is the Trustee's written consent to act as Trustee.
8. Attached is my affidavit of debts to be included in the plan.
9. Debtor requests to be permitted to amortize debts pursuant to Wis. Stat. § 128.21, and that a plan of amortization as may be proposed by the Trustee and submitted to the creditor(s) be approved by the court.

10. Debtor has submitted a proposed Order appointing the Trustee and enjoining the creditors listed in this petition from further collection procedures.

Dated: _____, 20__.

Debtor Name

Debtor Name

Subscribed and sworn to before me

this _____ day of _____, 20__.

Notary Public, State of Wisconsin
My commission expires _____, 20__
or is permanent

The undersigned attorney for debtor certifies that the proposed Trustee has consented to act as Trustee in this proceeding.

Dated: _____, 20__.

Signature
Name, Bar number, address, phone and email address:

Note: Include two (2) stamped envelopes – one addressed to Trustee and one to Debtor's attorney or, if no attorney, to Debtor

Milwaukee County Form CV 6: Affidavit of Debts

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____

Affidavit of Debts under Wis. Stat. §128.21

State of Wisconsin)
) SS
Milwaukee County)

_____ (Debtor's name), being first duly sworn upon oath, deposes and states:

He/she/they is/are the debtor(s) in the above-entitled proceeding. The following is a true list of the debts debtor desires to be included in the amortization plan to be formulated by the Trustee.

Instructions:

1. List each creditor by name and address and identify any account number you have for that creditor unless there would be an identity theft issue, i.e. the account number is a social security number.
2. List the amount due each creditor.
3. List a total of all debts to be included in the plan.
4. Each debtor must sign and each signature must be notarized.
5. Attach additional sheets if necessary to complete the list.

List of Creditors and Debts:

List of Creditors and Debts, cont'd:

Dated: _____, 20____.

Debtor Name

Debtor Name

Subscribed and sworn to before me

this _____ day of _____, 20____.

Notary Public, State of Wisconsin

My commission expires _____, 20____
or is permanent

Milwaukee County Form CV 7: Order Appointing Trustee

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No. _____

Order Appointing Trustee and Enjoining Creditors

This matter is before the court on petition of the debtor(s) listed above for the amortization of indebtedness pursuant to Wis. Stat. § 128.21.

NOW THEREFORE, IT IS ORDERED, that:

1. The petitioner(s) are allowed to proceed with the amortization of debts pursuant to the provisions of Wis. Stat. § 128.21.

2. _____
_____ (list name, address, phone and email for Trustee)

is appointed Trustee in this proceeding. The Trustee is directed to comply with Wis. Stat. §§ 128.21(3) and (3g).

3. No distributions shall be made before a plan is approved.

4. Upon the filing of this Order and while the case is proceeding, no execution, attachment, activation of wage assignment or garnishment may be initiated or enforced by creditors of the above-named debtor unless such creditor is not included in the plan.

5. Choose one:

☐ As requested by the debtor in the petition filed with the court, debtor's employer, _____
_____ (list employer) or debtor's current employer, shall, until otherwise directed by the Trustee or further order of the court, deduct \$ _____ from each of debtor's payroll checks and mail that sum directly to the Trustee named above.

☐ The debtor shall, until otherwise directed by the Trustee or further order of the court, pay directly to the Trustee, named above, the sum of \$ _____ monthly, on or before the 15th day of each month.

Dated: _____. 20____.

BY THE COURT:

Circuit Court Judge

Milwaukee County Form CV 8: Report of Trustee

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____

Report of Trustee

_____, the Trustee appointed by the court in this proceeding under Wis. Stat. § 128.21, reports to the court as follows:

1. Notice of these proceedings was mailed to all creditors listed in the Affidavit of Debts that was previously filed with the court with the petition; a copy of the notice to creditors is attached.
2. Pursuant to Wis. Stat. § 128.21, and in accordance with the notice given to creditors, a meeting of creditors was held on _____, 20____. No objections to the plan have been timely filed.
3. This plan is feasible and I recommend it be approved with payments to the Trustee in the monthly amount of \$_____ [weekly] [bi-weekly] [monthly] by [direct payments to the Trustee] [wage assignment].
4. THE PLAN: attached as Exhibit A is a list of creditors with the amounts owing as determined by the Trustee. The Trustee proposes to make pro-rata payments to all creditors every ninety (90) days or less, except small debts may be paid at the discretion of the Trustee in full from initial distributions for the sake of economy and convenience. Debtor's attorney fees do not constitute administrative expenses and if included within the plan shall be paid pro-rata along with all other creditors. All debts will be paid with three (3) years of the date of the Order Approving the Plan.

Dated: _____, 20____

Trustee

List address, phone, and email:

Milwaukee County Form CV 9: Plan

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

Debtor(s)

Case No. _____

Amortization Plan (Exhibit A)

The list of creditors below states the amounts owing to each creditor as determined by the Trustee either from the claims filed by the creditor or, if no claim was filed, then according to the amount set forth in the Debtor's Affidavit of Debts.

Additionally, the amount of the debtor's attorney's fees to be included within the plan is listed below. Those attorney fees do not constitute administrative expenses and will be paid pro-rata along with all other creditor claims under the plan.

The administrative expenses for the Trustee pursuant to §128.21(4)(a) and (b), Wis. Stats., are also listed below:

Instructions:

1. List Creditors, including debtor's attorney's fees, if included in the plan. (Attach additional sheets if necessary.)
2. List Trustee expenses – 7% or 10%, whichever applies, plus postage (estimate to be adjusted with each distribution)
3. State total debts and expenses.
4. State how much debtor will pay under the plan, e.g., Debtor will pay to the Trustee the sum of \$ _____, [weekly] [bi-weekly] [monthly] by [direct payments to the Trustee] [wage assignment].

Dated: _____, 20____

Trustee

List address, phone, and email:

Milwaukee County Form CV 10: Order Approving Plan

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No. _____

Order Approving Plan

This matter is before the court on petition of the debtor(s) listed above for the amortization of indebtedness pursuant to Wis. Stat. § 128.21.

The Trustee filed with the court a report showing that: (1) the debtor has submitted an Affidavit of Debts; (2) notice was sent to all scheduled creditors of a meeting with the Trustee; (3) the meeting was conducted, during which the scheduled creditors were given an opportunity to file claims and consider a plan of amortization; and (4) the Trustee recommends the court adopt the plan described in the Trustee's report to the court.

NOW THEREFORE, IT IS ORDERED that the plan set forth in the Trustee's report is approved, subject to the following conditions:

1. The Trustee make pro-rata disbursements to the creditors, including the debtor's attorney fees, every 90 days or less.
2. The debtor's attorney fees do not constitute administrative expenses under the plan and shall be paid pro-rata along with all other creditors without any priority.
3. The Trustee make periodic reports of receipts and disbursements to the court, debtor and all creditors, upon request by any of those listed.
4. The injunctive order prohibiting any execution, attachment, activation of wage assignment or garnishment by any creditor included in this plan shall remain in effect for three (3) years from the date of this order or as otherwise ordered by the court.
5. If the debtor fails to make payments for thirty (30) days or more, the Trustee shall report the matter to the court with the Trustee's recommendations. The debtor shall be given notice of the Trustee's report. The court shall either dismiss the proceedings or, if satisfied from the Trustee's report that the debtor is in good faith and should be able to make good the default, extend the period of grace for not to exceed thirty (30) days. At the end of the grace period, the Trustee shall again report to the court and if all defaults have not then been cured the court shall immediately dismiss the proceeding and Trustee shall notify all the creditors.
6. If the debtor makes preferential payments to creditors during the pendency of the proceedings, or appears for any reason to be abusing the privileges of Wis. Stat. § 128.21, the Trustee shall promptly report the matter to the court and the court may dismiss the proceedings.
7. If the claims of all creditors as listed in the plan are satisfied in full, the Trustee shall upon completion of the final distribution report to the court and the court shall dismiss the proceeding.
8. The debtor shall make payments to the Trustee in accordance with the plan and the debtor may make additional payments from time to time to the Trustee.

9. The Trustee shall distribute the payments proportionally among the creditors listed in the plan, less all of the following:
- a. A deduction for the Trustee's compensation in an amount not exceeding 7% of each distribution, if payments are made through an assignment to the Trustee of a portion of the debtor's wages or salary, and not exceeding 10% if no such assignment is made; and
 - b. A deduction equal to the amount of postage necessary for the mailing of payments and of the notices of the meeting with creditors and of any correspondence with creditors.
10. Any order for dismissal issued by the court shall be provided to the debtor, creditors and any interested party.
11. For statistical purposes, this case is ordered closed, subject to being reopened to enforce or dissolve injunction, administer or dismiss the plan or for the Trustee's final report

Dated: _____. 20____.

BY THE COURT:

Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION

MILWAUKEE COUNTY

In the Matter of the Voluntary Amortization of Debts of:

_____,
Debtor(s)

Case No.
Case Code 30304

CONSENT TO ACT

_____, do hereby consent to act as trustee in the above matter.

Dated this _____ day of _____, 20__.

_____, Trustee

State Bar No. _____

P.O. Address of Trustee:

Phone: _____

MILWAUKEE COUNTY APPROVED CHAPTER 128 TRUSTEE LIST

- 1.** **Atty. Mont L. Martin**
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